

You also have the right to contact the Office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance or you can contact your nearest Advocate's office, in this case by calling _____ or writing to:

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State officials of this action, as required by IRC section 6104(c). You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Attachments:
Publication 892

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

LEGEND

ORG = Organization name XX = Date XYZ = State President-1 = 1st President

Issue:

1. Should the tax exempt status of the ORG under Section 501(c)(3) of the Internal Revenue Code as a private foundation classified under Section 509(a) of the Internal Revenue Code be revoked for failure to provide the requested information to the Internal Revenue Service?
2. Should the tax exempt status of the ORG under Section 501(c)(3) of the Internal Revenue Code as a private foundation classified under Section 509(a) of the Internal Revenue Code be revoked for failing to file the required annual information returns?

Facts:

The ORG was incorporated in the state of XYZ on September 2, 19XX. On January 18, 20XX the organization filed a Form 1023 with the Internal Revenue Service requesting tax exempt status under Section 501(c)(3) of the Internal Revenue Code. According to their articles of incorporation which were filed with the Internal Revenue Service as part of their Form 1023 Application for Exemption, the organization was formed with the purpose of conducting medical research. They stated that their primary purpose would be to serve the public through modern alternative therapies relating to chronic disease prevention and cancer research. The organization's mission is to prevent or mitigate incidence of chronic diseases while enhancing the value of good health.

On April 25, 20XX the ORG was granted tax exempt status under Section 501(c)(3) of the Internal Revenue Code. The determination letter issued to the organization on April 25, 20XX stated that, "based on information you supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3)." As the organization was granted exemption under Section 501(c)(3), their determination letter also stated "because you are a newly created organization we are not now making a final determination of your foundation status under Section 509(a) of the Code. However, we have determined that you can reasonably expect to be a publicly supported organization described in Section 509(a)(2)." Accordingly the Internal Revenue Service set the organization's advance ruling period from September 9, 19XX through December 31, 20XX.

The ORG did not file the required Form 8734 following the conclusion of their advance ruling period at the end of 20XX. As a result they were classified as a non-operating private foundation under Section 509(a) of the Internal Revenue Code beginning on January 1, 20XX.

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ORG did not file a Form 990 for any tax period during their advance ruling period. The organization also did not file a Form 990PF for the 20XX tax period, or any subsequent calendar year.

A review of IRS records indicated that the ORG filed quarterly Form 941 employment tax returns through the December 31, 20XX tax period. Other IRS records indicated that the organization received interest income reported to them on a Form 1099-INT from 20XX through 20XX. The organization generated interest in the following amounts:

20XX	\$

A review of the Secretary of State's records of the State of XYZ indicated that the organization's corporate charter was revoked on June 12, 20XX for failing to file their annual report with the State.

The first attempt to make contact with the organization was done on May 31, 20XX using Letter 3606 (**Attachment A**). This letter was mailed to the organization along with an information document request, and a copy of Publication 1. The information requested by the Internal Revenue Service from the organization was a statement indicating why the organization did not file a Form 990PF for the 20XX tax period as well as financial documentation supporting their position. The Internal Revenue Service allowed the organization 30 days to provide the information and requested that the information be mailed in by June 30, 20XX.

Although no response was received from the organization relating to the Information Document Request, agent received a voice mail from the former President of the ORG. The former President, President-1, stated in her message that she had relocated to XYZ. On August 4, 20XX, agent left a message for the organization's President.

On September 13, 20XX after not receiving a return call from the organization's President, another Letter 3606 was sent to the ORG via certified mail (**Attachment B**).

On September 22, 20XX the former President left another voice mail message. On October 11, 20XX agent returned the taxpayer's call and left another message for the former President. On October 13, 20XX the former President called and stated that the organization was planning on filing a final return for the 20XX tax period and that her accountant had requested an extension to file for this return. She also stated that she relocated to XYZ due to health reasons and since that move the ORG has ceased operations.

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President-1 stated that in relocating, some of the organization's financial records have been lost. She stated she would be meeting with her CPA in the upcoming week to resolve this issue.

At the conclusion of the phone call, President-1 stated that she would provide the Internal Revenue Service with a copy of the 20XX return, a 20XX return, as well as a letter stating that the organization had dissolved. Research of IRS records indicated that no return has been posted or extension requested by the organization.

On December 18, 20XX after not receiving a response from the organization another letter, drafted by the agent (**Attachment C**), was sent to President-1 requesting a written statement stating that the organization dissolved along with a statement regarding how the remaining assets of the organization were disposed of after the organization ceased operations.

On December 29, 20XX, President-1 left another voice mail stating that she had transferred this latest notice to her accountant for follow up.

Law:

Section 1.501(c)(3)-1 of the Federal Tax Regulations states that, "(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

Section 1.509(a)-1 of the Federal Tax Regulations states that, "section 509(a) defines the term "private foundation" to mean any domestic or foreign organization described in section 501(c)(3) other than an organization described in section 509(a)(1), (2), (3) or (4)."

Section 1.507-1 of the Federal Tax Regulations states that,

"(a) Except as provided in §1.507-2, the status of any organization as a private foundation shall be terminated only if —

(1) Such organization notifies the district director of its intent to accomplish such termination, or

(2)

(i) With respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and

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(ii) The Commissioner notifies such organization that, by reason of subdivision (i) of this subparagraph, such organization is liable for the tax imposed by section 507(c),

and either such organization pays the tax imposed by section 507(c) (or any portion not abated under section 507(g)) or the entire amount of such tax is abated under section 507(g).”

Section 1.507-2 of the Federal Tax Regulations states that,

“(1) Under section 507 (b)(1)(A) a private foundation, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, may terminate its private foundation status by distributing all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution. Since section 507(a) does not apply to such a termination, a private foundation which makes such a termination is not required to give the notification described in section 507(a)(1). A private foundation which terminates its private foundation status under section 507(b)(1)(A) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.”

Section 6001 of the Internal Revenue Code provides that, “every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.”

Section 6033(a)(1) of the Internal Revenue Code provides, “except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.”

Section 1.6001-1(a) of the Federal Tax Regulations in conjunction with section 1.6001-1(c) provides that, “every organization exempt from tax under section 501(a) of the Internal Revenue Code and subject to the tax imposed by section 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by section 6033.”

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Section 1.6001-1(e) of the Federal Tax Regulations states that, “the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.”

Section 1.6033-1(h)(2) of the Federal Tax Regulations provides that, “every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Internal Revenue Code and section 6033.”

Revenue Ruling 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of section 6033 of the Internal Revenue Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

Taxpayer’s Position:

The former President of the ORG, President-1, did not provide a reason for not filing a Form 990 or 990PF during the telephone contact with the Internal Revenue Service. She stated that she would be speaking with her CPA on how to resolve the issue and that the requested Forms 990PF for the 20XX and 20XX tax periods would be filed.

President-1 also did not provide a reason for not providing the requested information to the Internal Revenue Service. She stated during the telephone contact with the Internal Revenue Service that she forwarded each letter received to her CPA.

Government’s Position:

Issue 1:

It is the government’s position that the tax exempt status of the ORG under section 501(c)(3) of the Internal Revenue Code should be revoked for failing to provide the information requested by the Internal Revenue Service.

Treasury Regulation Section 1.6033-2(i)(2) provides, in part, that every organization which is exempt from tax, whether or not it is required to file an annual return, shall submit such

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additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provision of subchapter F, chapter 1 of subtitle A of the Code, IRC Section 6033, and Chapter 42 of Subtitle D of the Code.

The ORG did not file a Form 990PF for the year under examination, calendar year 20XX. They also did not file a Form 990 for any tax period during their advance ruling period of September 9, 19XX through December 31, 20XX. The organization also does not have a website. The only information that the Internal Revenue Service has received on the activities of the organization is their Form 1023 Application for Exemption. However this does not provide any current information as to what the ORG is currently doing. The Information Document Request mailed to the organization requested a statement of activities, and financial information that would be used to substantiate this information. During a phone conversation with the former President of the organization, President-1 stated that the organization had dissolved and ceased all operations. Section 1.501(c)(3)-1(b)(4) of the Federal Tax Regulations states that upon dissolution of an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code all remaining assets must be distributed to another organization which has exemption under Section 501(c)(3). Based on this information the Internal Revenue Service, requested a letter signed by President-1 stating where the remaining assets at the time operations ceased of the ORG were distributed upon dissolution of the organization. This information was not provided by the organization. Section 507(a) of the Internal Revenue Code requires in most cases that private foundations which terminate write a letter to the Director of Exempt Organization's indicating their decision to dissolve and pay any tax imposed by Section 507(c). Private Foundations may dissolve under Section 507(b)(1)(A) of the Internal Revenue Code by distributing all of its remaining assets to organization's exempt under Section 501(c)(3) without providing advance notice to the Internal Revenue Service, as required by Section 507(a). However, they are still required to provide information regarding the distribution of all the remaining assets to the Internal Revenue Service when requested. This information is material in establishing whether the ORG properly dissolved under Section 507 of the Internal Revenue Code.

The ORG was given an adequate opportunity to provide the requested information. As stated previously the organization was mailed three separate letters by the Internal Revenue Service with the information document request and a copy of Publication 1. The first letter was mailed to the organization on May 31, 20XX. The remaining letters were mailed via certified mail on September 13th and December 18th. The certified mailing receipts for the final two letters were returned, each signed by the organization's former President. Along with the letters, agent spoke to the former President of the organization on October 13th, and December 29, 20XX.

The first two attempts to contact the organization were made using Letter 3606. The third paragraph on this letter specifically states that, "...failure to comply with our request for information could result in the loss of your tax exempt status." The final attempted contact with the ORG was made through a drafted letter.

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Based on the wording of these letters which were used to make contact with The ORG and the return receipts which show that the organization received the letters, it is apparent that the organization was adequately advised of the consequences of failing to provide the requested information to the Internal Revenue Service.

In accordance with the above cited provisions of the Internal Revenue Code and Federal Tax Regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Since the ORG did not comply with the Internal Revenue Service's requests for information and thus did not comply with Treasury Regulation 1.6033-2(i)(2), the government has no way of determining whether they dissolved properly under Section 507 of the Internal Revenue Code. Since ORG could not meet the requirements of the operational test set forth in Section 1.501(c)(3)-1 of the Federal Tax Regulations, or the requirements set forth in the Federal tax law governing the termination a private foundation under Section 507(a) or 507(b)(1)(A) it is the government's position that their tax exempt status under section 501(c)(3) of the Internal Revenue Code should be revoked.

Conclusion

Issue 1:

The tax exempt status of the ORG under Section 501(c)(3) of the Internal Revenue Code should be revoked because the organization has not established that it has observed the conditions required to properly dissolve a private foundation such as providing information that was requested from them by the Internal Revenue Service.

The effective date of revocation of the ORG, is January 1, 20XX the first day of the tax year under examination.

Government's Position

Issue 2:

It is the government's position that the tax exempt status of the ORG under section 501(c)(3) of the Internal Revenue Code should also be revoked for failing to file their annual Form 990PF when required to do so.

Internal Revenue Code Section 6033(a)(1) states that, "Except as provided in paragraph (2), every organization exempt from taxation under section 501(a) shall file an annual return..."

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Section 6033(a)(2) states that the exceptions to file are:

(A) Mandatory exceptions:

- (i) Churches, their integrated auxiliaries, and conventions or associations of churches
- (ii) Any organization (other than a private foundation, as defined in section 509(a)) described in subparagraph (C), the gross receipts of which in each taxable year are normally not more than \$25,000, or
- (iii) The exclusively religious activities of any religious order

(B) Discretionary exceptions: The Secretary may relieve any organization required under paragraph (1) to file an information return from filing such a return where he determines that such filing is not necessary to the efficient administration of the internal revenue laws

(C) Certain organizations The organizations referred to in subparagraph (A)(ii) are—

- (i) a religious organization described in section 501(c)(3)
- (ii) an educational organization described in section 170(b)(1)(A)(vi)
- (iii) a charitable organization, or an organization for the prevention of cruelty to children and animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public;
- (iv) an organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in clause (i)
- (v) an organization described in section 501(c)(8); and
- (vi) an organization described in section 501(c)(1), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a wholly-owned subsidiary of such a corporation

The ORG did not meet any of the exceptions stated in paragraph (3) of Section 6033 of the Internal Revenue Code, as beginning in the tax year under examination, calendar year 20XX, the organization was classified as a private foundation. Unlike public charities, organizations classified as a private foundation under Section 509 of the Internal Revenue Code have an annual filing requirement for a Form 990PF for each tax period despite the amount of gross revenue they generate. According to IRS records ORG Inc. generated \$ in interest income during the year under examination calendar year 20XX. Based on this information ORG had a filing requirement for the 20XX calendar year.

Revenue Ruling 59-95 held that failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which

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implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.”

Using this revenue ruling as precedent, it is the government’s position that the tax exempt status of the ORG under Section 501(c)(3) of the Internal Revenue Code should be revoked.

Conclusion

Issue 2:

The tax exempt status of the ORG under Section 501(c)(3) of the Internal Revenue Code should be revoked because the organization has not established that it is observing conditions required for the continuation of exempt status such as filing annual Forms 990PF information returns.

The effective date of revocation of the ORG, is January 1, 20XX the first day of the tax year under examination.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
10 Causeway Street
Room 581
Boston, MA 02222

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination